

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 272 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KANJIBHAI RANCHHODBHAI VANKAR

Versus

STATE OF GUJARAT

Appearance:

MR PJ VYAS for Petitioner

Mr TH Sompura AGP for the Respondents.

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 16/12/96

ORAL JUDGEMENT

Under order dated 15th April, 1959, one Ranchhodbhai Lalbhai, father of the petitioner herein was allotted a piece of land bearing survey No. 1132 admeasuring 2245 sq. mtrs. On demise of said Ranchhodbhai on 27th September, 1968, said piece of land was inherited by his widow Bhaniben and the son Kanjibhai [present petitioner]. Said Bhaniben expired on 22nd November, 1979 leaving the petitioner as her sole heir.

The petitioner, thus, became sole owner of the whole of the land bearing survey No. 1132. It appears that the petitioner, thereafter, sold the said piece of land to a non-agriculturist in violation of the terms and conditions of the grant. The Deputy Collector, Vadodara, therefore, initiated proceedings for the breach of the terms of grant and under his order dated 30th October, 1990, forfeited the said land to the Government. The petitioner thereafter, made an application for grant of very piece of land. Said application was granted and under order dated 7th December, 1990, said piece of land was allotted to the petitioner. The petitioner, thereafter, made a declaration in Form-1 under section 6 of the Urban Land [Ceiling and Regulation] Act, 1976 [hereinafter referred to as "the Act"]. The competent authority, considering the said declaration, under his order dated 22nd March, 1991, decided that the petitioner was entitled to hold one unit of the land and declared 745 sq. mtrs. of land as excess vacant land in the hands of the petitioner. Thereupon on 3rd April, 1991, the petitioner made an application under section 21 (1) of the Act. The competent authority under its order dated 30th March, 1994, rejected the said application as having been filed beyond the period of limitation. Said order made by the competent authority was confirmed by the Tribunal under its order dated 28th July, 1995 made on Appeal No. 45 of 1994.

2. Feeling aggrieved, the petitioner has preferred this petition. Learned advocate Mr. Vyas has appeared for the petitioner and has submitted that the said land was forfeited to the Government under order dated 30th October, 1990 made by the Deputy Collector. The petitioner had, thus, lost all rights, title and interest over the said land in view of the said forfeiture of the land to the Government. The petitioner acquired same piece of land on account of grant made by the Deputy Collector on 7th December, 1990 and the application for exemption was made within few months thereafter. He has, therefore, submitted that the application for exemption under section 21(1) of the Act was within the period stipulated under rule 11 of the Urban Ceiling and Regulation (Rules). He has, therefore, submitted that the competent authority as well as the Tribunal have erred in rejecting the application made by the petitioner as time barred.

3. Learned Asstt.GP Mr. Sompura has appeared for the respondents and has contested the petition. He has submitted that rule 11 of the rules requires that any application under section 21(1) of the Act is required to be made within 1139 days from the commencement of the

Act. The petitioner having failed to do so, his application has rightly been rejected by the authorities below. He has further contended that in any event, the petitioner was in possession of the excess vacant land since 1979 (since the death of his mother) and the petitioner ought to have made application for exemption at least within 1139 days from the death of his mother. He has further contended that the petitioner has been in possession of the said land since prior to the date of commencement of the Act. Even after forfeiture of the land to the Government, he was in the actual possession of the said land. The petitioner, therefore, cannot be said to have acquired the land on 7th December, 1990 (date of regrant) as contended by the petitioner. He has, therefore, submitted that Proviso a to Rule 11 is not attracted in the facts of the present case and the application of the petitioner has been rightly rejected by the authorities below.

4. Rule 11 of the Rules provides that every declaration under sub-section (1) of section 21 of the Act by a person holding the vacant land shall be made within 1139 days from the date of commencement of the Act and shall be in Form -V. Proviso (a) to the said rules provides that where on or after the commencement of the Act, any person acquires any vacant land in the manner provided in sub-section (1) of section 15....., time within which such person may file the declaration referred to under sub section(1) of section 21 shall be 1139 days. Thus, from the date on which one acquires such vacant land in the manner as aforesaid. Section 15 provides for ceiling limit on future acquisition by inheritance, bequest or by sale in execution of decrees etc. It provides that if, on or after the commencement of this Act, any person acquires by inheritance, settlement or bequest from any other person or by sale in execution of decree or order of civil court or by award or order of any other authority or by purchase or otherwise, any vacant land....., then, he shall within three months of the date of such acquisition file a statement before the competent authorityparticulars as maybe prescribed of all the vacant lands held by him and also specifying the vacant lands within the ceiling limits which he desires to be taken.

5. It is undisputed that the petitioner had not filed any declaration under section 6 of the Act on the date of the commencement of the Act. He did not file such declaration even after the death of his mother when he became the sole owner of the whole of the land. He

did not apply for exemption under section 21(1) of the Act either. However, on account of forfeiture of the land to the Government, the petitioner lost his rights, title and interest over the said lands and he acquired the same again under the order of the Deputy Collector made on 7th December, 1990. In my view, the language of section 15 is wide enough to cover the acquisition of land by the petitioner on 7th December, 1990. The right which had been lost by the petitioner on account of forfeiture was acquired by him under order of the Deputy Collector. Thus, it must be said that the petitioner acquired the said land under order of the authority as is envisaged under section 15 (1) of the Act. He accordingly filed a declaration under section 6 of the Act within three months of such acquisition. I am, therefore, of the view that for the purpose of application under section 21(1) of the Act, the limitation should start from the date of acquisition under the order made by the Deputy Collector (7th December, 1990) under proviso (a) to rule 11 of the Rules. It is not disputed that the petitioner did make an application under section 21(1) of the Act within 1139 days from the date of acquisition of the land as aforesaid. The Competent Authority and the Tribunal both erred in rejecting the said application as time barred. The continuous possession of the petitioner over the land inspite of the order of forfeiture is, in my view, of no consequence. The petitioner did not retain the rights, title and interest over the land on account of his possession inspite of the order of forfeiture. It must, therefore, be held that the petitioner has acquired the said piece of land on 7th December, 1990 under the order made by the Deputy Collector.

6. In view of the above discussion, the impugned orders made by the competent authority and the Tribunal Annexure "B" & "A" to the petition respectively are quashed and set aside. The competent authority is directed to consider the petitioner's application for exemption in accordance with law and make necessary orders. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. Ad-interim order made earlier stands vacated. There shall be no order as to costs.

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